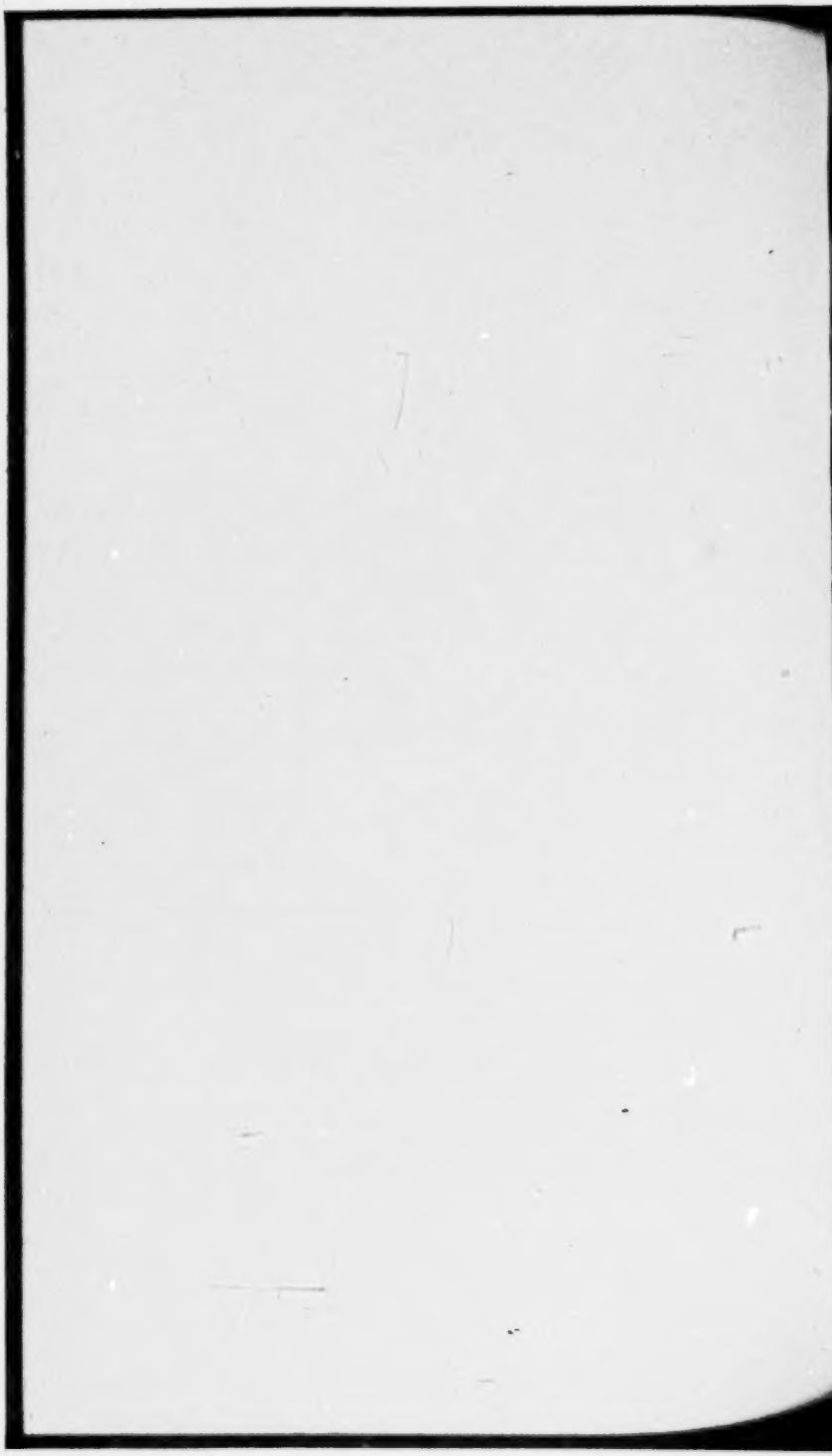

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### STATUTES

IN THE

# Supreme Court of the United States

October Term, 1947
No. 714

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN K. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. EZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

*Petitioners,*

*vs.*

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

*Respondents.*

## Brief of Petitioners in Reply to Answer Briefs of Respondent IATSE, et al., and Respondent Companies, Respectively.

### Statement of Case.

In their respective answer briefs, respondents have each given a statement of the case. Respondent IATSE, called Alliance, in its brief (p. 1) quotes the following from the memorandum opinion of the District Judge [R. 122, 70 Fed. Supp. 1008-1009]:

> "The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement

allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is 'to drive the nails.' The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

Which, except for the last sentence, relates to only part of the case.

Respondent further states (p. 4):

"In January, 1946, The Studios, pursuant to the decision of the Three-Man Committee, allocated the work of erecting sets on stages to members of The Alliance, with the result, it is alleged, that Members of Local 946 of the Carpenters who had been doing such work were supplanted [R. 16-17]."

That is, that respondents in their construction and application of said decision, or award, supplanted Carpenters with the IATSE in work that the Carpenters "had been doing" under their long-standing contracts; and

"On August 16, 1946, the Three-Man Committee of the Executive Council of the American Federation of Labor issued a purported 'clarification' of its December 26, 1945, decision on award, in which it was stated 'the word erection is construed to mean assemblage of such sets on stages or locations.' "

That is, the Arbitration Committee stated its original intention in said decision, or award, to correct the said misconstruction and misapplication thereof made by respondents; and

"If the terms of this 'clarification' were put into effect by The Studios, it would mean that the work of erection of sets on stages, being performed by

members of The Alliance, would be taken away from them and given to members of Local 946 of the Carpenters."

That is, the Arbitration Committee's said clarification would simply restore to the Carpenters the work that had always belonged to them, and that they had been doing, under their contracts, but that had been taken from them by respondents' said misconstruction and misapplication of said December 26, 1945 decision or award.

**The Other Carpenters.**

Attention is called, however, to the fact that respondent's quotation from the District Court's memorandum opinion, and the opinion itself, refer only to those of the Carpenter employees concerned with set construction. Other Carpenters were covered by the contract between the Carpenters Local 946, and the respondent Companies, and between the Carpenters and the IATSE. Paragraph XXVI of the complaint [R. 17] deals with the dismissal of "approximately twelve hundred carpenters from said employment" including those doing other types of carpenter work in the studios, who were dismissed after the IATSE Exhibit "I" letter of August 31, 1946, repudiating the clarification [R. 65]:

"XXVI. Thereafter and continuing to the present time, defendants Motion Picture Companies have refused to employ plaintiffs and the class for which they sue at the work prescribed by the aforesaid decision and award, but in said time have discharged

approximately twelve hundred carpenters from said employment and have engaged members of defendant I.A.T.S.E. and persons not members thereof but issued 'Permit to Work' and 'Emergency Working Cards' by defendant officers and of said union to do the work awarded by the aforesaid decision to plaintiffs, in violation of the agreements of said companies hereinbefore alleged."

The dismissal of all Carpenters was in furtherance of the conspiracy between respondent Companies, and respondent IATSE, as alleged in the second cause of action [R. 22-27; Pet. App. 74-79].

**The Issue.**

The last sentence in respondent's quotation from the memorandum opinion of the District Court correctly states the issue:

> "The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

It has been shown in the brief supporting the petition, to which reference is made to avoid repetition, that the Court had, and has, jurisdiction because this case arises under the Constitution and laws of the United States, and also because of the additional jurisdiction since conferred by Section 301 of the Labor-Management Relations Act of 1947.

## POINT I.

### Jurisdiction Under Fifth Amendment.

Reference is made to Point I in petitioners' opening brief (pp. 17-21), and particularly to petitioners' language therein that the Court had, and has, jurisdiction without diversity of citizenship:

> "*If* the Fifth Amendment and related laws guarantee the civil right to work under contracts, and to negotiate under the terms thereof, in accordance with Section 7 of the National Labor Relations Act, as amended, free from conspiracy and interference by private parties,"

Respondent Companies' Point I answer thereto (pp. 3-4) cites *Corrigan v. Buckley,* 271 U. S. 323, 330, *Talton v. Mayes,* 163 U. S. 376, 382, which are accepted as general statements of the law in the light of their day and time, before this era of federal laws in labor-management relations.

Respondent IATSE's Point III answer thereto (pp. 17-25) cites additional cases, including *Love v. U. S.,* 108 F. (2d) 43, 44-46, and italicizes the following quotation therefrom (pp. 23-24):

> "But such determination has always been rested upon the interpretation and application of the provisions of the constitution and federal enactments. It cannot be predicated upon any judicial concept concerning an able-bodied, competent and willing man's natural or inherent right to work. Unless a legal right has been defined and conferred by legislative authority, no justiciable controversy is present. The principles applicable are the same in the field of

government work as in the broader field of private enterprise. The right to work at a particular employment must be shown to have become vested by law in the person asserting it."

Petitioners' contractual right to work, and contractual right to continue collective bargaining, have been shown to have become vested by law, to-wit: Section 7 of the NLRA. Their long-standing contracts include the present written "interim agreement" between their union and the respondent Motion Picture Companies (Pet. 4-6), covering:

1. A "contract for two years" [R. 32; App. C, 63];

2. "Wage scales, hours of employment and working conditions" [R. 33; App. C, 64];

3. Employment in its provisions for "all crafts going back to work on Wednesday a. m. July 3, 1946". [R. 34; App. C, 63], and in the work of the Carpenters thereunder; and

4. An agreement to bargain collectively under Section 7 of the NLRA, as now amended [R. 28, 29].

Emphasis is given this agreement to negotiate and bargain by its mention three times in the present "interim agreement." The caption says:

> "* * * agreements reached and effective pending the formal signing of contracts" (Pet. 59).

The body of the minutes, adopted as an "interim agreement," says:

> "An interim agreement will be entered into pending drawing up formal agreements" (Pet. 60).

The attached letter from the Chairman of the Producers Committee to the Conference of Studio Unions says:

> "Pending the completion of contracts between the individual unions, members of the C. S. U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement" (Pet. 59).

There is no question of petitioners' property rights under the Fifth Amendment (Pet. 18-21).

*If* the Court considers that the guaranties of the Fifth Amendment apply to petitioners' contractual right to work, and to their contractual right to continue bargaining collectively, both under Section 7 of the NLRA, then it is respectfully submitted that the Court has jurisdiction under this point.

## POINTS II and III.

**Jurisdiction Under Judicial Code Section 24(1)(8); Under Point II Because This Case Arises Under the National Labor Relations Act, as Reenacted in Labor-Management Relations Act of 1947; and, Under Point III to Enforce the Award of the A. F. of L. Arbitration Committee.**

Reference is made to Points II and III in the petitioners' opening brief (pp. 22-27, 27-30).

RE ANSWER OF RESPONDENT COMPANIES.

Respondent's view, in answer to Point II is threefold (p. 4):

> 1. "Violation of collective bargaining agreements is not prohibited by the National Labor Relations Act. The Act does not even require that employers or unions enter into collective bargaining contracts, much less that they perform them when made."

which is an obsolete view in the developments and problems of labor-management relations, and which is also in conflict with *Marbury v. Madison*, 1 Cranch, 137 (Pet. 21).

> 2. "Even if the acts of the Motion Picture Companies which are claimed to be violative of the collective bargaining agreements were also violative of rights of the Petitioners which were protected by the National Labor Relations Act, still, the District Court would not have jurisdiction to declare that the Act had been violated."

which is also obsolete if laws for collective bargaining are to have any force or effect, or are to meet the requirements of our national economy.

> 3. "Under Section 10(a) of the Act as it existed at the time this action was dismissed by the District

> Court, the National Labor Relations Board had exclusive jurisdiction over unfair labor practices."

which has no bearing upon this case, where the Court is only asked to interpret the contract, as was done in *Oil Workers International Union, Local 463, etc. v. Texoma Natural Gas Company,* 146 F. (2d) (Pet. 38-40), and as was prayed in *Loew's Incorporated v. Basson,* 46 F. Supp. 66 (Pet. 37-40).

Furthermore, attention is called to the rule stated in *California State Brewers Institute v. International Brotherhood of Teamsters, et al.* etc., 19 F. Supp. 824 (1), which is cited in petitioners' brief (p. 28), as follows:

> "The two unions here involved are members of the American Federation of Labor. The National Labor Relations Board, in all cases which have arisen concerning jurisdictional disputes between members of the same labor organization, has held that such dispute must be decided by that labor organization itself. This court holds that the National Labor Relations Board has, in this respect, properly interpreted the act."

This accepted ruling of the Labor Board, that it is without jurisdiction between two unions belonging to the A. F. of L., is applicable here, where the A. F. of L. set up its Arbitration Committee under an agreement between the carpenters Brotherhood, Local 946, the respondent IATSE, and the respondent Companies, and where this A. F. of L. Board rendered its award, and clarification, set forth in the petition and opening brief (pp. 6-8, 28-30).

Upon the rendition of said award by the A. F. of L. Committee, and of its clarification to express the original intent thereof, the administrative procedure was exhausted. There was no where to go, in following up the arbitration award to make it effective, except to the courts, as has been done in this case.

The appearance in and consent to this proceeding, filed by the Brotherhood of Carpenters, stands to the very great credit of that outstanding labor organization [R. 68], as follows:

> "Comes now the United Brotherhood of Carpenters & Joiners of America, named as defendant herein, and by its counsel enters its appearance herein as to both the original and amended complaints on file herein, and does not contest the granting of the prayer of plaintiffs' amended complaint."

### Re Answer of Respondent IATSE.

Respondent IATSE answers Points II and III under its Points I and II (pp. 1-7, 8-16), with reasoning similar to that advanced by the respondent Companies.

### Reply to All Respondents.

It is submitted that the Court has jurisdiction:

1. Under Point II to construe the contracts by declaratory judgment; and

2. Under Point III to construe and act upon the A. F. of L. award and clarification; so as to determine the rights and responsibilities of the parties thereunder.

## POINT IV.

### Jurisdiction Under Remedial Section 301(a) of the Labor-Management Relations Act of 1947.

Reference is made to petitioners' opening brief (pp. 31-34), and to respondent Companies' Point IV in answer thereto (pp. 7-8), where respondent contends:

1. That the phrase in said section "may be brought" bars pending actions. This is in conflict with the intention of Congress, as expressed in the House debate, and shown in Appendix "G" hereto attached, and made a part hereof; and

2. That said section should be construed as restricted to "actions between a labor organization and an employer," or between two labor organizations. No such restriction can be reasonably placed upon the language in the section, providing that

> "Suits for violation of contracts," between an employer and a labor organization, or between such labor organization, "may be brought in any district court" etc.

The section refers to "contracts between" and not to "suits between" an employer and a labor organization, or between such labor organizations.

Reference is also made to respondent IATSE's Point V (pp. 27-28) to the same general effect as the said contention of respondent Companies.

It is respectfully submitted, as shown by Appendix "G" attached hereto, that Section 301(a) was enacted

to meet just such situations as the conspiring respondents have here brought upon the locked out Carpenters of Hollywood, and against the general welfare of the public at large.

Attention is called to the illuminating remarks, of both Representative Barden and Representative Case, and to the clear statement of Chairman Hartley, in said Appendix "G" as attached hereto.

## POINT V.

Petitioners' Point V upon the Court's jurisdiction in this case for declaratory relief only, where the Court has original jurisdiction, is not seriously questioned by respondent Companies' Point V (p. 9), nor by respondent IATSE's Point IV (p. 26).

## POINT VI.

Petitioners' Point VI upon the applicability of the Declaratory Judgments Act, to reconcile the conflict in principle between the decision in this case and decisions in other District and Circuit Courts, is not answered by either respondent.

## Conclusion.

In conclusion it is respectfully requested that the Court consider:

1. The need for stability based upon respect for contracts, and law and order, in labor-management relations;

2. The points and authorities in petitioners' opening brief upon the jurisdiction of federal courts to uphold federal enactments;

3. The availability of the Declaratory Judgments Act to prevent unnecessary, and unjustified labor-management conflicts as use has been made of this remedy, and as its worth has been shown in *Loew's Incorporated v. Basson, et al.*, 46 F. Supp. 66, and *Oil Workers International Union, et al. v. Texoma Natural Gas Co.*, 146 F. (2d) 62, cited and quoted in petitioners' opening brief; and

4. That declaratory relief offers a solution to present-day problems, where contracts are willfully disregarded, free from the sting of injunction.

Respectfully submitted,

ZACH LAMAR COBB,
*Attorney for Petitioners.*

## APPENDIX "G."

**Congressional Record, April 17, 1947, Page 3334.**
**H. R. 3020, Labor Bill, Section 302(a).**

Re Legislative History on Court Jurisdiction for Declaratory Relief in Labor Jurisdictional Disputes arising after Collective Bargaining Contracts and/or Arbitration Awards.

Mr. Barden: Mr. Chairman, a parliamentary inquiry.

The Chairman: The gentleman will state it.

Mr. Barden: Do I understand the Clerk has completed reading section 302?

The Chairman: The gentleman is correct.

Mr. Barden: Mr. Chairman, I move to strike out the last word.

The Chairman: The gentleman from North Carolina is recognized for 5 minutes.

Mr. Barden: Mr. Chairman, I take this time for the purpose of asking the Chairman a question, and in asking the question I want it understood that it is intended to make a part of the record that may hereafter be referred to as history of the legislation.

It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts in strike actions and proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.

Mr. Hartley: The interpretation the gentleman has just given of that section is absolutely correct.

Mr. Case of South Dakota: Mr. Chairman, will the gentleman yield?

Mr. Barden: I yield.

Mr. Case of South Dakota: Would the gentleman and the Chairman agree that that also includes declaratory judgments in the case of jurisdictional disputes?

Mr. Barden: I would so understand it.

Mr. Case of South Dakota: I would like to have that in the record also because declaratory judgments is a proceedings which has been adopted in the case of jurisdictional disputes.

Mr. Barden: I think the language is clear, but I want to make it certain.

Mr. Case of South Dakota: That is involved, and I refer to declaratory judgments. It is involved in the case of the motion picture players of California and I think we can strengthen the hands of those who are trying to get that matter straightened out.

Mr. Barden: It will minimize lawsuits and cut down the length of these controversies. That is the purpose of it.